

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID M. MARK,

Defendant.

2:11-CR-00453-PMP-CWH

ORDER

Having read and considered Defendant Mark's Motion for Bail Pending Appeal (Doc. #231), the Government's Response in Opposition thereto (Doc. #238) and Defendant Mark's Reply (Doc. #244), and good cause appearing, the Court finds as follows:

The record of proceedings in this case establishes to the satisfaction of the Court by clear and convincing evidence, and in accord with 18 U.S.C. § 3143(b)(1), that Defendant Mark is not likely to flee or pose a danger to the safety of any other person or the community if the Conditions of Release imposed pre-trial are continued throughout the pendency of Defendant's Appeal of his conviction and sentence of imprisonment herein.

The Court further finds that Defendant Mark's Appeal is not taken for purpose of delay, and raises a "fairly doubtful" or "fairly debatable", and hence "substantial question" in connection with the Court's denial of Defendant Mark's Motion to Dismiss. (See Docs. #104 & #127). A reversal by the United States Court of Appeals for in connection with this Court's Order (Doc. #127) denying Defendant's Motion to Dismiss would likely result in reversal or an order for a new trial. Under the circumstances, and in accord with the

standards articulated in *United States v. Handy*, 761 F. 2d. 1279, 1283 (9th Cir. 1985), the Court finds Defendant Mark's Motion for Bail Pending Appeal should be granted.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Defendant Mark shall continue on the same Conditions of Release imposed pretrial in this case subject to such modification as the Court may approve on motion of either Party or at the request of the United States Pretrial Service Office.

DATED: November 12, 2013.

A handwritten signature in black ink, appearing to read "Philip M. Pro", written over a horizontal line.

PHILIP M. PRO
United States District Judge